

TENNESSEE ALCOHOLIC BEVERAGE COMMISSION

Minutes
January 18, 2005
9:30 a.m.

The regular meeting of the Tennessee Alcoholic Beverage Commission was held on Tuesday, January 18, 2005 in Nashville, Tennessee at 9:30 a.m. Commissioners John A. Jones, Harlan Mathews and Cynthia Bond were present. Director Danielle Elks, Assistant Director Carolyn Smith and ASAC Andy Woodall were present from the staff.

The Minutes for December 16, 2004 Commission Meeting were approved.

RETAIL PACKAGE STORES:

A. OLD BUSINESS

1. CAESAR'S WINE AND LIQUORS Memphis, Tennessee

Applicant: Kardoush, LLC
Stockholders: Charles Kardoush and Michael Kardoush

Before the Commission is a request for a new retail store to be located at 9959 Highway 64, in Memphis, Tennessee. Charles Kardoush and Michael Kardoush intend to operate the business as a limited liability corporation. They intend to initially invest \$500,000 to operate the business. Financing for this investment came for the sale of Trinity Liquors in July, 2004. All documentation has been submitted with the exception of the following:

- a. Original charter for Kardoush, LLC; and
- b. Certificate of Compliances for Charles and Michael Kardoush.

This matter was continued from the December Commission meeting.¹ Attorney David Wade represented the applicants, and Attorney William Haynes, III represented the licensee Ernesta Isabel who has objected to the distance between the

¹ This matter was originally continued from the November, 2004 Commission meeting because the certificates of compliance had not been submitted. The City of Memphis had denied the Certificate of Compliances based upon the distance between the next closest store. However, the original matter before the City was heard on July 21, 2004, and continued until October 6, 2004, at which time the City of Memphis denied the certificate based upon the afore-mentioned reason. T.C.A. §57-3-208(e) sets forth that "A failure of the part of the issuing authority to grant or deny the certificate within sixty (60) days of the written application for such shall be deemed a granting of the certificate." A lawsuit was filed against the City, requesting that the certificates be issued.

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proposed store and her existing store. Parties advised that the Chancery Court had issued a ruling declaring that the Certificates of Compliance should be issued; however, a thirty day period existed for parties to appeal the decision. The Commission continued the matter until the January meeting to allow the appeal period to expire. The application is pending before the Commission.

Discussion/Action Taken:

Commissioner Mathews recused himself from this matter stating that a potential conflict existed, and did not participate in any of the discussion regarding the application. Charles and Michael Kardoush were present and also their Attorney David Wade was present. Ms. Earnesta Isabel, licensee of M & J's Wine and Spirits, was present and was represented by William J. Haynes, III. Director Elks reviewed the history of the application for the Commission. Director Elks stated that the court did issue a court order and was issued from the City stating that the City did not act within the requisite period of time and was deemed to be granted. Director Elks stated that the Court had not issued a Stay in this matter. Commissioner Jones made a motion to approve the application and Commissioner Bond seconded the motion and it passed with 2 ayes. Director Elks stated that a licensee must submit a Certificate of Compliance every two (2) years and if the licensee is unable to submit a Certificate of Compliance in two (2) years then at that point the Commission would have to take the necessary steps to revoke the license.

NOTE: Commissioner Mathews rejoined participation in the Commission's matters.

B. NEW BUSINESS

1. WALNUT GROVE WINE AND SPIRITS Memphis, Tennessee (Shelby County)

Seller/Licensee: James C. Moore
Applicant: R. Gregory Baumgarten

Before the Commission is a request for a transfer of ownership of an existing retail store located at 2875 Walnut Grove, in Memphis, Tennessee. Mr. Baumgarten intends to purchase the establishment for \$194,285 (\$157,000 plus inventory). Financing is based upon a promissory note in the amount of \$194, 285 with the seller, Mr. Moore. An additional \$50,000 promissory note to Tiny Polinak has also been disclosed. All requested documents have been provided with the exception of the following:

- a. Questionnaire for Tiny Polinak, and
- b. Acknowledgement of the TABC Rules and Regulations.

Discussion/Action Taken:

Director Elks reviewed the application for the Commissioners and recommended approval upon submission of the Questionnaire for Tiny Polinak and the Acknowledgment of the TABC Rules and Regulations. Commissioner Bond made a motion to approve the application pending the submission of the pending documents. Commissioner Mathews seconded the motion and it was approved with 3 ayes.

**2. CORN SILK LIQUORS
Springfield, Tennessee (Robertson County)**

Applicant: Edwards and Fletcher, LLC
Stockholder: Edward Fletcher, Jr. and Donnie Ray Edwards

Before the Commission is a request for a new retail store to be located at 2800 Memorial Boulevard, in Springfield, Tennessee. Mr. Edward Fletcher, Jr. and Donnie Ray Edwards intend to initially invest \$70,000 in the business. Financing is based upon personal funds of both parties from existing businesses. All documentation has been submitted with the exception of the following:

- a. Federal Tax Stamp in the LLC's name;
- b. TABC Inspection;
- c. Acknowledgement of the Rules and Regulations;
- d. Use and Occupancy Permit, and
- e. Copy of the Newspaper Notice and Affidavit.

Discussion/Action Taken:

Director Elks reviewed the application for the Commissioners and recommended continuation to the February 2005 Commission Meeting because on Mr. Donnie Ray Edwards address is listed on documents as a Kentucky address. Tennessee statute requires that all of the applicants be current residents of the State of Tennessee. Part of the documentation that was submitted to this office sets forth that Mr. Edwards address was in Tennessee, which as it turns out was his son's address. Director Elks recommended that this matter be continued until next month until this matter can be dissolved. Director Elks believes that there was an intent to mislead the Commission pertaining to his residency and that a citation should be issued. That does not need to be resolved until the matter comes back before the Commission. Commissioner Mathews made a motion to continue the matter until the February 2005 Commission Meeting and Commissioner Bond seconded the motion and it passed with 3 ayes.

**3. LaGRANGE DISCOUNT LIQUORS
Memphis, Tennessee (Shelby County)**

Applicant: LaGrange Discount Liquors, LLC
Members: James Callicutt, Jr., Jason Rothschild, and Nancy Davis

Before the Commission is a request for a new retail store to be located at 5798 Raleigh LaGrange in Memphis, Tennessee. The three members propose to operate this establishment as a LLC. Ms. Nancy Davis and Mr. Jason Rothchild intend to each invest \$17,500, and each own 25% of the business. Mr. Callicutt intends to invest \$35,000, and own 50% of the business. Each member will obtain their investment from existing personal funds. All documentation has been submitted with the exception of the following:

- a. Questionnaire for Fred Roberts, Jr.

Discussion/Action Taken:

Director Elks reviewed the application for the Commissioners and recommended approval pending the submission of the Questionnaire for Fred Roberts, Jr. Commissioner Mathews made a motion to approve pending the submission of the Questionnaire for Fred Roberts, Jr. Commissioner Bond seconded the motion and it was approved with 3 ayes.

**4. SANGO WINE AND SPIRITS
Clarksville, Tennessee (Montgomery County)**

Seller/Licensee: Matthew H. Marinko
Buyer/Applicant: Jack G. Miller, LLC
Members: Jack G. Miller

Before the Commission is a request to transfer ownership of the retail store currently located at 1049 Highway 76, in Clarksville, Tennessee. Mr. Miller intends to purchase the establishment for \$475,000, plus inventory: this amount also includes the land and building. Mr. Miller's questionnaire indicates that financing is based upon personal funds at First Federal Savings Bank in Clarksville. All documentation has been submitted with the exception of the following:

- a. TABC Inspection,
- b. Written acknowledgement of the Rules and Regulations;
- c. Federal Tax Stamp in the LLC's name;
- d. Specifics of Michael Miller's interest in a liquor license;
- e. Deed—when obtained;
- f. Clarification of source of financing for Applicant;
- g. Payment of any outstanding citations that may exist.

Discussion/Action Taken:

Director Elks reviewed the application for the Commissioners and recommended continuation until the February 2005 Commission Meeting based on the fact that the Bill of Sale to Mr. Jack Miller is from Mr. Matthew Marinko and Robert Schutz. Mr. Marinko was issued a license in April 2003 as a sole proprietorship. Robert Schutz, was disclosed on the application, however, as a landlord's interest only. It was determined after an investigation that Mr. Miller has been negotiating the sale of this business solely with Mr. Schutz. After further investigation, it was determined that this business has been operating as a partnership, therefore, there has been hidden ownership in this business since the issuance of the license. This office feels that this matter needs to be resolved prior to the issuance of a new license. Ms. Elks stated that the applicant meets all of the requirements subject to the submission of the documentation, and that the applicant is not in fault in any way. Commissioner Mathews made a motion to defer this matter until the February 2005 Commission Meeting. Commissioner Bond seconded the motion and it was approved with 3 ayes.

3. LBD: PRIVATE CLUBS

**A. FAYETTEVILLE ELKS LODGE 1792
Fayetteville, Tennessee (Lincoln County)**

Licensee: Fayetteville Elks Lodge 1792

Before the Commission is a request to transfer the location of the private club from a temporary location at 1121 Huntsville Highway to its new permanent club facility at 1750 Wilson Parkway in Fayetteville, Tennessee. Fayetteville Elks Lodge moved into its temporary location in August, 2004, with the Commission's approval. The new permanent facility is tentatively scheduled to be completed on February 1, 2005. All documentation regarding the new location has been submitted with the exception of the Certificate of Occupancy and the TABC Inspection Report.

Discussion/Action Taken:

Assistant Director Smith reviewed the application for the Commissioners and recommended approval of the transfer of location. Commissioner Mathews made a motion to approve pending the submission of the remaining documents. Commissioner Bond seconded the motion and it was approved with 3 ayes.

4. CONTESTED CASES

A. SCOTT A. WEIGANDT

Mr. Weigandt has appealed the decision of TABC staff denying his application for a server permit, and hereby requests a hearing. TABC staff denied Mr. Weigandt's application for a permit based on a conviction for the possession of schedule 2 controlled substances with intent to sell. T.C.A. §57-3-704 prohibits the issuance of a server permit to anyone who has been convicted of any crime relating to the sale of schedule 1 or 2 controlled substances within eight years of the date of the application.

Discussion/Action Taken:

Assistant Director Carolyn Smith reviewed the application for the Commissioners and stated that Mr. Scott Weigandt has retained an attorney to represent him at the hearing and, at this time, has requested that the hearing be continued until the February Commission meeting, at which time, his attorney will be available to represent him. Commissioner Mathews made a motion to defer the matter until the February Commission meeting. Commissioner Bond seconded the motion and it passed with 3 ayes.

B. PHILLIP SADLER

Mr. Sadler has appealed the decision of TABC staff denying his application for an employee permit, and hereby requests a hearing. TABC staff denied Mr. Sadler's application for a permit based upon a conviction for the sale of alcoholic beverages to a minor in May, 2004. T.C.A. 57-3-703 prohibits the issuance of an employee permit to anyone who has been convicted of any crime involving the sale or distribution of alcohol over the previous eight (8) years of the date of the application.

Discussion/Action Taken:

Phillip Sadler was present for the meeting. Director Elks reviewed the application to the Commissioners. Commissioner Mathews made a motion to defer the matter to the February meeting to allow Phillip Sadler a chance to have his conviction expunged from his record. Commissioner Bond seconded the motion and it was approved with 3 ayes.

5. WINERY

6. SPECIAL OCCASION LICENSES

7. CONSUMER EDUCATION SEMINAR LICENSES

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- 8. PERSONNEL**
- 9. BUDGET**
- 10. CONSENT ORDERS**
- 11. PENDING MATTERS LIST**
- 12. MISCELLANEOUS**
- 13. DATE OF NEXT MEETING – February 17, 2005 at 9:30 a.m.**

There being no further business the meeting was adjourned.

Shari Danielle Elks
Executive Director

John A. Jones
Chairman